

## Department of Commerce

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which the Government must deliver items of Government property shall be deemed to be extended by an equal number of days unless (i) the Contracting Officer agrees in writing that earlier delivery of the items is required, in which case some or all of the Government property shall be extended as agreed rather than on a day-for-day basis, or (ii) a Government property item was the exclusive cause for the extension of the delivery date of the vessel in which case the latest date by which the Government must deliver the item shall not be deemed to be extended unless the parties agree otherwise.

(c) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. If the Government furnished property is not delivered to the Contractor by such time and the Contractor makes a timely written request, the Contracting Officer shall determine if an equitable adjustment is appropriate. If determined appropriate, the Contracting Officer shall equitably adjust the delivery or performance date, the specifications, the price, or any other contractual provision affected by any such delay, in accordance with the Changes clause.

(d) The Government Property and Minimization of Delay Due to Government Furnished Property clauses contain exclusive remedies. The Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

### 1352.217-95 Additional provisions relating to Government property.

As prescribed in 1317.7001(a), insert the following clause:

#### ADDITIONAL PROVISIONS RELATING TO GOVERNMENT PROPERTY (CAR 1352.217-95) (JAN 1987)

(a) Notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in plans, drawings, or other data, the Government shall furnish only the material specifically listed in the specifications as Government furnished property. Any material required for the performance of the contract which does not appear in the specifications as Government furnished shall be furnished by the Contractor.

(b) The Contracting Officer may increase the amount of material to be furnished by the Government and the contract shall be equitably adjusted in accordance with the Government Property clause.

(c) Unless otherwise specifically directed by the Contracting Officer, nonreusable crates and other nonreusable packaging in which Government material is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated material.

(d) Any packaging in preparation for delivery or for other disposal of Government property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the Government Property clause shall be provided for by change order and an appropriate adjustment shall be made in the contract price in accordance with the Changes clause.

(e) The vessel, its equipment, movable stores, cargo and other ship's material are not designated Government furnished property under the Government Property clause.

(End of clause)

### 1352.217-96 Liability and insurance.

As prescribed in 1317.7001(a), insert the following clause:

#### LIABILITY AND INSURANCE (CAR 1352.217-96) (JAN 1987)

(a) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent. However, the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) the loss or damage is discovered within 90 days after redelivery of the vessel and (ii) loss or damage is affirmatively shown to be the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for

the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government owned materials and equipment shall in no event exceed the sum of \$300,000. As to the Contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of \$300,000. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the Contractor brought to determine the Contractor's liability, or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, or the vessel arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, its or their servants, agents or employees; provided that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of \$300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death,

personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the Contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against its liability as ship repairer in the amount of \$300,000, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies. However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The Contractor shall provide evidence of insurance as required by the Government.

(e) The Contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of the damage shall be given by the Contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate

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with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses and in the conduct of suits. The Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in this assistance. Except at its own cost, the Contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

### 1352.217-97 Title.

As prescribed in 1317.7001(a), insert the following clause:

TITLE (CAR 1352.217-97) (JAN 1987)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part hereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work. However, the Contractor is fully responsible for all such Contractor furnished materials and equipment or the restoration of any damaged work. It is expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

### 1352.217-98 Discharge of liens.

As prescribed in 1317.7001(a), insert the following clause:

DISCHARGE OF LIENS (CAR 1352.217-98) (JAN 1987)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any contract hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

### 1352.217-99 Department of Labor occupational safety and health standards for ship repairing.

As prescribed in 1317.7001(a), insert the following clause:

DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIP REPAIRING (CAR 1352.217-99) (JAN 1987)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678), and to the Occupational Safety and Health Standards for Shipyard Employment (29 CFR 1915), promulgated under Pub. L. 85-742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupational Safety and Health Act of 1970 (29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States, including any dry dock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

### 1352.217-100 Regulations governing asbestos work.

As prescribed in 1317.7001(a), insert the following clause:

REGULATIONS GOVERNING ASBESTOS WORK  
(CAR 1352.217-100) (JAN 1987)

If asbestos is encountered, the Contractor shall follow the regulations contained in 29 CFR 1910.1001 (OSHA, Chapter XVII).